

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION**

SOLOMON CASSELL,

Plaintiff,

v.

RALPH KEMP; WARDEN BRUCE  
CHAPMAN; RUFUS LOGAN; TOM  
GRAMIAK; and NATHAN BROOKS,

Defendants.

CIVIL ACTION NO.: 6:15-cv-88

**ORDER and MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Plaintiff, who is currently housed at Ware State Prison in Waycross, Georgia, submitted a Complaint in the above captioned action brought pursuant to 42 U.S.C. § 1983. (Doc. 1.) For the reasons which follow, I **RECOMMEND** that the Court **DISMISS** this Complaint for failure to state a claim. Additionally, Plaintiff should be **DENIED** leave to appeal *in forma pauperis*.

**BACKGROUND<sup>1</sup>**

Plaintiff, who is currently incarcerated at Ware State Prison in Reidsville, Georgia, filed this action contesting certain conditions of his confinement. Plaintiff contends that on January 23, 2014, he was transferred from Jenkins Correctional Facility in Millen, Georgia, to Georgia Diagnostics and Classifications Prison (“GDCP”) in Jackson, Georgia. (*Id.* at p. 5.) Upon arrival at GDCP, Plaintiff was assigned to the Tier III Special Management Unit (“Tier III SMU”) at GDCP. *Id.* He contends that the conditions in the Tier III SMU are more difficult than in the general population and that he did not have the opportunity to contest his confinement. *Id.*

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<sup>1</sup> The following facts are taken from Plaintiff’s Complaint and are construed as true, as they must be at this stage.

Defendant Rufus Logan told Plaintiff that he was placed in the Tier III SMU because he was a “security threat.” Id. Plaintiff contends that he did not meet GDCP’s standard operating procedure’s requirements for being placed in the Tier III SMU. Id.

Then, on January 30, 2015, Plaintiff was transferred to Ware State Prison from GDCP. (Id. at p. 8.) Upon arrival at Ware State Prison, Plaintiff was placed in the Tier II Unit. Plaintiff complained about his placement in Tier II Unit to Defendants Gramiak and Brooks, but this placement was not overturned. Id. Plaintiff attached to his Complaint an appeal form whereby he contested his placement in the Tier II Unit at Ware State Prison. (Id. at pp. 16–17.) Plaintiff contends that a review of his disciplinary report history demonstrates that he “does not fit the criteria for the Tier II program nor was [Plaintiff] giving [sic] a hearing to challenge the placement on the Tier III program.”

Plaintiff sued Ralph Kemp, the Warden of Jenkins Correctional Facility; Bruce Chapman, the Warden of GDCP; Rufus Logan, the Unit Manager at GDCP; Tom Gramiak, the Warden at Ware State Prison; and Nathan Brooks, the Unit Manager at Ware State Prison. As relief, Plaintiff seeks preliminary and permanent injunctions as well as punitive damages. (Id. at p. 6.)

### **STANDARD OF REVIEW**

Plaintiff seeks to bring this action *in forma pauperis* under 42 U.S.C. § 1983. Under 28 U.S.C. § 1915(a)(1), the Court may authorize the filing of a civil lawsuit without the prepayment of fees if the plaintiff submits an affidavit that includes a statement of all of his assets and shows an inability to pay the filing fee and also includes a statement of the nature of the action which shows that he is entitled to redress. Even if the plaintiff proves indigence, the Court must dismiss the action if it is frivolous or malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii). Additionally, pursuant to 28 U.S.C. § 1915A, the

Court must review a complaint in which a prisoner seeks redress from a governmental entity. Upon such screening, the Court must dismiss a complaint, or any portion thereof, that is frivolous or malicious, or fails to state a claim upon which relief may be granted or which seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

When reviewing a Complaint on an application to proceed *in forma pauperis*, the Court is guided by the instructions for pleading contained in the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 8 (“A pleading that states a claim for relief must contain [among other things] . . . a short and plain statement of the claim showing that the pleader is entitled to relief.”); Fed. R. Civ. P. 10 (requiring that claims be set forth in numbered paragraphs, each limited to a single set of circumstances). Further, a claim is frivolous under Section 1915(e)(2)(B)(i) “if it is ‘without arguable merit either in law or fact.’” Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002) (quoting Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001)).

Whether a complaint fails to state a claim under Section 1915(e)(2)(B)(ii) is governed by the same standard applicable to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). Thompson v. Rundle, 393 F. App’x 675, 678 (11th Cir. 2010). Under that standard, this Court must determine whether the complaint contains “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A plaintiff must assert “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not” suffice. Twombly, 550 U.S. at 555. Section 1915 also “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” Bilal, 251 F.3d at 1349 (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)).

In its analysis, the Court will abide by the long-standing principle that the pleadings of unrepresented parties are held to a less stringent standard than those drafted by attorneys and, therefore, must be liberally construed. Haines v. Kerner, 404 U.S. 519, 520 (1972); Boxer X v. Harris, 437 F.3d 1107, 1110 (11th Cir. 2006) (“Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys.”) (emphasis omitted) (quoting Hughes v. Lott, 350 F.3d 1157, 1160 (11th Cir. 2003)). However, Plaintiff’s unrepresented status will not excuse mistakes regarding procedural rules. McNeil v. United States, 508 U.S. 106, 113 (1993) (“We have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.”). The requisite review of Plaintiff’s Complaint raises several doctrines of law which require the dismissal of the Complaint.

## **DISCUSSION**

As an initial matter, this Court must give deference to prison officials on matters of prison administration and should not meddle in issues such as the contents of a prisoner’s file. Courts traditionally are reluctant to interfere with prison administration and discipline, unless there is a clear abuse of discretion. See Procunier v. Martinez, 416 U.S. 396, 404–05, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974) (“Traditionally, federal courts have adopted a broad hands-off attitude toward problems of prison administration [because] ... courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform.”), overruled on other grounds by Thornburgh v. Abbott, 490 U.S. 401, 109 S.Ct. 1874, 104 L.Ed.2d 459 (1989). In such cases, “[d]eference to prison authorities is especially appropriate.” Newman v. State of Ala., 683 F.2d 1312, 1320-21 (11th Cir.1982) (reversing district court’s injunction requiring release of prisoners on probation because it “involved the court in the operation of the State’s system of criminal justice to a greater extent than necessary” and less intrusive equitable remedy

was available); see also, Thornburgh, 490 U.S. at 407–08 (“Acknowledging the expertise of these officials and that the judiciary is ‘ill equipped’ to deal with the difficult and delicate problems of prison management, this Court has afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world.”); Bell v. Wolfish, 441 U.S. 520, 547 (1979) (acknowledging that courts have “accorded wide-ranging deference [to prison administrators] in adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.”); Jones v. North Carolina Prisoners’ Labor Union, 433 U.S. 119, 129 (1977) (“Prison officials must be free to take appropriate action to ensure the safety of inmates and corrections personnel and to prevent escape or unauthorized entry.”); Bradley v. Hart, No. CV513-127, 2015 WL 1032926, at \*10 (S.D. Ga. Mar. 9, 2015) (“It does not appear to be appropriate for this Court to order that prison officials remove entries from Plaintiff’s file, which may or may not be accurate.”).

Further, in order to state a claim for relief under Section 1983, a plaintiff must satisfy two elements. First, a plaintiff must allege that an act or omission deprived him “of some right, privilege, or immunity secured by the Constitution or laws of the United States.” Hale v. Tallapoosa Cty., 50 F.3d 1579, 1582 (11th Cir. 1995). Second, a plaintiff must allege that the act or omission was committed by “a person acting under color of state law.” Id. Plaintiff alleges that Defendants violated his right to be free from cruel and unusual punishment and his due process rights by placing him in the Tier III SMU at GDCP and the Tier II Unit at Ware State Prison. As a result, he requests punitive damages as well as injunctive relief. The Court will assess each of these requests in turn.

## **I. Plaintiff's Claims for Monetary Damages**

In his prayer for relief, Plaintiff sought punitive damages, but he did not seek any compensatory damages or allege that he has suffered any physical injury. “No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.” 42 U.S.C. § 1997e(e). The purpose of this statute is “to reduce the number of frivolous cases filed by imprisoned plaintiffs, who have little to lose and excessive amounts of free time with which to pursue their complaints.” Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002) (citing Harris v. Garner, 216 F.3d 970, 976-79 (11th Cir. 2000)). “Tracking the language of [this] statute, § 1997e(e) applies only to lawsuits involving (1) Federal civil actions (2) brought by a prisoner (3) for mental or emotional injury (4) suffered while in custody.” Id. at 532. In Williams v. Brown, 347 F. App’x 429, 436 (11th Cir. 2009), the Eleventh Circuit held that, “compensatory damages under § 1983 may be awarded only based on actual injuries caused by the defendant and cannot be presumed or based on the abstract value of the constitutional rights that the defendant violated. Pursuant to 42 U.S.C. § 1997e(e), in order to recover for mental or emotional injury suffered while in custody, a prisoner bringing a § 1983 action must demonstrate more than a *de minim[i]s* physical injury.” Id. (internal citations omitted) (alterations in original).

Plaintiff’s failure to allege that he has suffered any physical injury is fatal to his claim for punitive damages as well as any putative claim for compensatory relief. Al-Amin v. Smith, 637 F.3d 1192, 1199 (11th Cir. 2011) (“In sum, our published precedents have affirmed district court dismissals of punitive damage claims under the PLRA because the plaintiffs failed to meet

§ 1997e(e)'s physical injury requirement.”). Consequently, the Court should **DISMISS** Plaintiff's claims for monetary damages.

## **II. Plaintiff's Claims for Injunctive Relief**

Plaintiff also requests that this Court issue preliminary and permanent injunctions to correct Defendant's alleged errors regarding his placement in the Tier III SMU at GDCP and the Tier II Unit at Ware State Prison.

As for Plaintiff's injunctive relief claims against Ralph Kemp, the Warden of Jenkins Correctional Facility; Bruce Chapman, the Warden of GDCP; and Rufus Logan, the Unit Manager at GDCP, those claims are now moot because Plaintiff is no longer housed at Jenkins Correctional or GDCP. An inmate's claim for injunctive relief against prison officials is subject to dismissal for mootness when the prisoner is transferred to another prison and is no longer under the control of the prison officials against whom injunctive relief is sought. Spears v. Thigpen, 846 F.2d 1327, 1328 (11th Cir.1988) (per curiam); Wahl v. McIver, 773 F.2d 1169, 1173 (11th Cir.1985) (per curiam ) (“Absent class certification, an inmate's claim for injunctive relief and declaratory relief in a section 1983 action fails to present a case or controversy once the inmate has been transferred.”). Thus, the Court should **DISMISS AS MOOT** Plaintiff's claims for injunctive relief against Defendants Kemp, Chapman, and Logan.

However, Plaintiff is still incarcerated at Ware State Prison. Accordingly, his claims against Tom Gramiak, the Warden at Ware State Prison; and Nathan Brooks, the Unit Manager at Ware State Prison are not moot. Though, in order to obtain injunctive relief against these Defendants, Plaintiff must establish that these Defendants have violated or imminently will violate his constitutional rights. Newman v. State of Ala., 683 F.2d 1312, 1319 (11th Cir. 1982) (“To be entitled to permanent injunctive relief from a constitutional violation, a plaintiff must

first establish the fact of the violation.”). Plaintiff levies conclusory claims that these Defendants have violated his Eighth Amendment Right to be free from cruel and unusual punishment and his rights to due process guaranteed by the Fourteenth Amendment. However, as laid out below, these claims are without merit.

#### **A. Eighth Amendment Claims**

The cruel and unusual punishment standard of the Eighth Amendment requires prison officials to “ensure that inmates receive adequate food, clothing, shelter, and medical care.” Farmer v. Brennan, 511 U.S. 825, 832 (1994). Generally speaking, however, “prison conditions rise to the level of an Eighth Amendment violation only when they involve the wanton and unnecessary infliction of pain.” Chandler v. Crosby, 379 F.3d 1278, 1289 (11th Cir.2004) (quotations omitted). Thus, not all deficiencies and inadequacies in prison conditions amount to a violation of a prisoner’s constitutional rights. Rhodes v. Chapman, 452 U.S. 337, 349, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981). The Constitution does not mandate comfortable prisons. Id. Prison conditions violate the Eighth Amendment only when the prisoner is deprived of “the minimal civilized measure of life’s necessities.” Id. at 347.

Even accepting Plaintiff’s assertions as true, they do not plausibly state an Eighth Amendment claim. The conditions imposed in “administrative segregation and solitary confinement do not, in and of themselves, constitute cruel and unusual punishment.” Sheley v. Dugger, 833 F.2d 1420, 1428–29 (11th Cir.1987); see also, Gholston v. Humphrey, No. 5:12-CV-97-MTT-MSH, 2014 WL 4976248, at \*3 (M.D. Ga. Oct. 3, 2014) (dismissing prisoner’s claims that his transfer to SMU with more restrictive conditions without a “legitimate penological justification” amounts to an Eighth Amendment violation); Anthony v. Brown, No. CV 113-058, 2013 WL 3778360, at \*2 (S.D. Ga. July 17, 2013) (dismissing on frivolity review



Eighth Amendment claims based on conditions of confinement in crisis stabilization unit). Plaintiff does allege a plausible claim that the conditions of confinement in the Tier II Unit constitute a deprivation of “the minimal civilized measure of life’s necessities.”<sup>2</sup> Rhodes, 452 U.S. at 349. Accordingly, his claims under the Eighth Amendment against Defendants Gramiak and Brooks should be **DISMISSED**.

### **B. Procedural due process**

An inmate states a cognizable claim for the deprivation of his procedural due process rights under the Fourteenth Amendment when he alleges the deprivation of a constitutionally protected liberty or property interest, state action, and constitutionally inadequate process. Shaarbay v. Palm Beach Cnty. Jail, 350 F. App'x 359, 361 (11th Cir. 2009) (citing Cryder v. Oxendine, 24 F.3d 175, 177 (11th Cir. 1994)). Constitutionally adequate process requires compliance with the minimum due process protections accorded to an inmate in prison disciplinary proceedings: (1) the right to receive written notice of the charges against him at least 24 hours before his hearing; (2) the right to call witnesses and present documentary evidence, where doing so would not be unduly hazardous to institutional safety or correctional goals; and (3) the right to receive a written statement setting forth the disciplinary committee's findings of fact. Asad v. Crosby, 158 F. App'x 166, 173 (11th Cir. 2005) (citing Wolff v. McDonnell, 418 U.S. 539, 563-66 (1974)).

Plaintiff fails to allege any facts leading to the plausibility that his placement in the lockdown unit was punitive in nature. In fact, on facts similar to the case at hand, this Court has held that an inmate's placement in administrative segregation is a non-punitive action. Bradley v. Hart, No. CV513-127, 2015 WL 1032926, at \*5 (S.D. Ga. Mar. 9, 2015), appeal dismissed (July 8, 2015). Additionally, Plaintiff does not allege that he has not received adequate process

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<sup>2</sup> Plaintiff attached a list entitled “Tier II Conditions and Privileges” to his Complaint. (Doc. 1, p. 13.)

at Ware State Prison. Plaintiff attached to his Complaint an appeal form whereby he contested his placement in the Tier II program at Ware State Prison. (Id. at pp. 16–17.) While Plaintiff’s Complaint establishes that he was dissatisfied with the outcome of his process at Ware State Prison, it does not allege insufficient process.

Because Plaintiff was not punished in any way and was not charged with any infraction of prison rules or regulations, there was no attendant duty, under due process principles, to notify him of any charges or reasons for his placement in the lockdown unit. Consequently, Plaintiff cannot sustain a procedural due process claim against Defendants Gramiak and Brooks.

### **C. Substantive Due Process**

“The Due Process Clause protects against deprivations of ‘life, liberty, or property without due process of law.’” Kirby v. Siegelman, 195 F.3d 1285, 1290 (11th Cir. 1999) (quoting U.S. CONST. AMEND. XIV). The Supreme Court has identified two situations in which a prisoner can be deprived of liberty such that the protection of due process is required: (1) there is a change in the prisoner’s conditions of confinement so severe that it essentially exceeds the sentence imposed by the court; and (2) the State has consistently given a benefit to prisoners, usually through a statute or administrative policy, and the deprivation of that benefit “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Id. at 1290–91 (quoting Sandin v. Conner, 515 U.S. 472, 484 (1995)).

In Sandin, the United States Supreme Court addressed whether the punishment inmate Conner received for a disciplinary violation was sufficient to invoke a liberty interest protected by the Due Process Clause. 515 U.S. at 472. Following a disciplinary conviction, Conner received 30 days’ disciplinary segregation in a Special Housing Unit. Id. at 475. After noting that the segregation was a form of punishment, the Court concluded that it was not a dramatic

departure from the conditions of Conner's indeterminate sentence. Id. at 485. The Supreme Court held there is no right inherent in the Due Process Clause for an inmate not to be placed in disciplinary segregation nor is there a state-created liberty interest to be free from disciplinary segregation. Id. at 487. The Court determined that the conditions of disciplinary segregation at the prison where Conner was incarcerated were virtually indistinguishable from the conditions of administrative segregation and protective custody. Id. at 486. Also, the Court noted that the conditions of disciplinary segregation were not markedly different from the conditions in general population. Id. The Court concluded that the conditions of disciplinary segregation did not impose an "atypical, significant deprivation in which a State might conceivably create a liberty interest." Id. Thus, the Court determined that Conner was not entitled to due process protection. Id. at 487. The Court observed that this holding was a return to the due process principles of Wolff v. McDonnell, 418 U.S. 539, (1974), and Meachum v. Fano, 427 U.S. 215 (1976), which required an inmate to suffer a "grievous loss" before a liberty interest could be found. Id. at 478–83. The Sandin Court ruled that in the future, liberty interests "will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, (citations omitted), nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Id. at 480, 484; see also, Rodgers v. Singletary, 142 F.3d 1252, 1253 (11th Cir.1998) (affirming that two months' confinement to administrative segregation was not a deprivation of a constitutionally protected liberty interest).

In the present action, Plaintiff has not plausibly alleged that his placement in the Tier II Unit at Ware State Prison deprives him of a liberty interest inherent in the Constitution. Additionally, Plaintiff fails to state what liberty interest is at stake from his placement in the unit.

Moreover, Plaintiff fails to set forth any facts which plausibly could lead to the conclusion that the conditions of the Tier II Unit impose an atypical and significant hardship on him relative to the ordinary incidents of prison life. Thus, Plaintiff's confinement in the Tier II Unit at Ware State Prison does not deprive him of a constitutional liberty interest or a state-created liberty interest to which due process could attach. In short, Plaintiff fails to set forth facts sufficient to render any substantive due process claim plausible against Defendants Gramiak and Brooks.

### **III. Leave to Appeal *In Forma Pauperis***

The Court should also deny Plaintiff leave to appeal *in forma pauperis*.<sup>3</sup> Though Plaintiff has, of course, not yet filed a notice of appeal, it would be appropriate to address these issues in the Court's order of dismissal. Fed. R. App. P. 24(a)(3) (trial court may certify that appeal is not taken in good faith "before or after the notice of appeal is filed").

An appeal cannot be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). Good faith in this context must be judged by an objective standard. Busch v. Cty. of Volusia, 189 F.R.D. 687, 691 (M.D. Fla. 1999). A party does not proceed in good faith when he seeks to advance a frivolous claim or argument. See Coppedge v. United States, 369 U.S. 438, 445 (1962). A claim or argument is frivolous when it appears the factual allegations are clearly baseless or the legal theories are indisputably meritless. Neitzke v. Williams, 490 U.S. 319, 327 (1989); Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993). Or, stated another way, an *in forma pauperis* action is frivolous and, thus, not brought in good faith, if it is "without arguable merit either in law or fact." Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002); see also Brown v. United States, Nos. 407CV085, 403CR001, 2009 WL 307872, at \*1–2 (S.D. Ga. Feb. 9, 2009).

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<sup>3</sup> A certificate of appealability is not required in this Section 1983 action.

Based on the above analysis of Plaintiff's action, there are no non-frivolous issues to raise on appeal, and an appeal would not be taken in good faith. Thus, *in forma pauperis* status on appeal should be **DENIED**.

### **CONCLUSION**

For the numerous reasons set forth above, I **RECOMMEND** that this action be **DISMISSED** for failure to state a claim and that Plaintiff be **DENIED** leave to appeal *in forma pauperis*.

Any party seeking to object to this Report and Recommendation is **ORDERED** to file specific written objections within fourteen (14) days of the date on which this Report and Recommendation is entered. Any objections asserting that the Magistrate Judge failed to address any contention raised in the Complaint must also be included. Failure to do so will bar any later challenge or review of the factual findings or legal conclusions of the Magistrate Judge. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). A copy of the objections must be served upon all other parties to the action. The filing of objections is not a proper vehicle through which to make new allegations or present additional evidence.

Upon receipt of Objections meeting the specificity requirement set out above, a United States District Judge will make a *de novo* determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the Magistrate Judge. Objections not meeting the specificity requirement set out above will not be considered by a District Judge. A party may not appeal a Magistrate Judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. Appeals may be made only from a final

judgment entered by or at the direction of a District Judge. The Clerk of Court is **DIRECTED** to serve a copy of this Report and Recommendation upon the Plaintiff.

**SO ORDERED** and **REPORTED** and **RECOMMENDED**, this 5th day of January, 2016.

A handwritten signature in blue ink, appearing to read "R. Stan Baker". The signature is fluid and cursive, with the first name "R" being large and prominent, followed by "Stan" and "Baker" in a more compact script.

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R. STAN BAKER  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA